

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 28 2006

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID WAYNE MENZ,

Defendant - Appellant.

No. 05-30359

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

D.C. No. CR-05-00010-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

David Wayne Menz appeals from the 40-month sentence imposed following his guilty-plea conviction for assault with a dangerous weapon, in violation of 18 U.S.C. § 113(a)(3). We have jurisdiction pursuant to 28 U.S.C. § 1291. We

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review the sentence for reasonableness, *see United States v. Booker*, 543 U.S. 220, 260-64 (2005), and we affirm.

Menz contends that the district court imposed an unreasonable sentence when it sentenced him to a term of imprisonment which was three months above his advisory guidelines range. We disagree.

We have previously stated that, “[t]o comply with the requirements of *Booker*, the district court must have sufficiently considered the Guidelines as well as the other factors listed in 18 U.S.C. § 3553(a).” *United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006). The record demonstrates that the district court did, in fact, specifically consider the advisory guidelines range and § 3553(a) before imposing Menz’s 40-month sentence. Therefore, Menz’s sentence is not unreasonable. *See id.* (stating that the requirement to consider the § 3553(a) factors necessitates “a showing that the district court considered the statutorily-designated factors in imposing a sentence”).

AFFIRMED.